

COMMERCIAL COURT AT ASANSOL

Present : Sri Sourav Bhattacharya
Judge, Commercial Court at Asansol

JO Code : WB00854.

Money Suit No. : 19/2021

CNR No. : WBBD17-000036-2021

Plaintiff : M/s. TESCON and Anr.

V/s.

Defendant : Punjab National Bank and 2 Ors.

Order No – 02

Dated - 21/05/2021

This day is fixed for steps.

Plaintiffs are represented by Ld. Advocates Sri Sagarmay Ghosh and Sri Sovontanu Bhattacharyya, who appear through virtual mode.

On 18th May, 2021, the Ld. Advocates sent an email for sending virtual link for moving the ad-interim injunction application and accordingly link was sent to them and they appear on virtual mode this day.

On careful perusal of the case record during the course of hearing this case, it came to my notice that the plaintiffs have filed Mediation application form (Schedule – I) in terms of Rule 3(1) of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 (hereinafter referred to as said Rules) along with the plaint.

This application ought to have been filed before the concerned Legal Services Authority prior to the institution of this suit.

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However, a glance at Section 12 A of the Commercial Courts Act, 2015, as amended would clearly indicate that it was an obligation / mandatory procedural formality on the part of the plaintiffs to exhaust the remedy of Pre-Institution Mediation in accordance with law prior to the institution of this suit.

It further came to my notice that there was no formal Leave Application under Section 12 A of the Commercial Courts Act, 2015, as amended but it was inadvertently noted in Order No – 01, dated 20/04/2021 that petition under Section 12 A of the said Act was filed although application being I.A. No – 04 of 2021 dated 20/04/2021 along with a duplicate copy thereof was actually filed for Pre-Institution Mediation.

Let this I.A. (I.A. No – 04 of 2021, dated 20/04/2021) be noted for Mediation Application form as per Rule 3(1) of the said Rules. Office to do the necessary correction in the relevant record and computer database accordingly.

Since injunction application was filed seeking urgent relief, so leave under Section 12 A of the said Act was granted in Order No – 01.

In view of the Pre-Institution Mediation Application as per Rule 3(1) of the said Rules and in light of the ratio of the judgment dated 22/02/2021 passed by the Hon'ble High Court, Calcutta in C.O. No – 1678 of 2020 (M/s. Dhanbad Fuels Ltd. V/s. Union of India & Ors.), it would be appropriate to keep the suit in abeyance and to direct the plaintiff to approach the concerned District Legal Services Authority (DLSA) i.e. DLSA, Bankura (since the cause of action arose at Bankura) for Pre-Institution

Mediation. That being the position, invoking Section 151 of C.P. Code, leave under Section 12 A of the said Act granted vide Order No – 01, dated 20/04/2021 stands withdrawn for the ends of justice directing the plaintiffs to exhaust the process of Pre-Institution Mediation in accordance with law.

HENCE,

IT IS

ORDERED

That the suit be kept in abeyance until receipt of the report of the Ld. Mediator in the matter of Pre-Institution Mediation.

The hearing of interim relief for injunction be deferred accordingly.

The plaintiffs are directed to approach the DLSA, Bankura in accordance with the SOP and the said Rules at the earliest after the lockdown is over on the strength of this order in terms of their Mediation Application as per Rule 3(1) of the said Rules.

Let a copy of this order sheet be sent to the email id of the recorded Advocate of the plaintiffs.

Let the duplicate copy of Pre-Institution Mediation Application as per Rule 3(1) along with the copy of this Order sheet be sent by email as well as post to the Secretary, DLSA, Bankura for information and necessary action, who is requested to act in terms of the said Rules of 2018 and the SOP (Standard Operating Procedure) to initiate Pre-Institution Mediation. I.A. No – 04 of 2021 stands disposed of accordingly.

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The Secretary, DLSA, Bankura is requested to complete the process within the period as prescribed by Rule 3(8) of the Rules of 2018.

The Mediator shall file a report in such form and manner as prescribed by the Rules within the stipulated period before this Court through the Secretary, DLSA, Bankura.

The remuneration / fees etc of the Ld. Mediator will be fixed as per the SOP read with the Rules of 2018.

The Ld. Mediator is at liberty to hold the process through online mechanism / virtual mode, if such facilities are available at the Mediation Centre, Bankura.

Fix 02/08/2021 for Pre-Institution Mediation report.

D/C by me.

Judge, Commercial Court
Asansol

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